

Before the  
Administrative Hearing Commission  
State of Missouri



DEPARTMENT OF HEALTH & SENIOR  
SERVICES,

Petitioner,

vs.

DEFINITELY LEARNING CHILD  
CARE CENTER, LLC,

Respondent.

No. 12-0813 DH

**DECISION**

Definitely Learning Child Care Center, LLC, (“Definitely Learning”) is subject to discipline because it failed to maintain a facility that was safe and suitable for the care of children, a safe and suitable play area, lawful staff/child ratios, a safe premises, and failed to develop safety policies and procedures.

**Procedure**

On January 23, 2012, the Department of Health & Senior Services (“the Department”) notified Definitely Learning that the Department intended to revoke its license, and Definitely Learning requested a hearing. This decision to revoke was based on alleged events occurring from December 2010 through January 2012. On May 14, 2012, the Department filed a complaint seeking to discipline Definitely Learning. We opened Case No. 12-0813 DH. On June 12, 2012, Definitely Learning filed an answer.

On April 27, 2012, the Department delivered written notice of immediate suspension to the center and a letter notifying Definitely Learning of its intent to revoke the license. Definitely Learning requested a hearing, and on July 31, 2012, the Department filed a complaint. We opened Case No. 12-1362 DH. This immediate suspension and revocation was based on events that took place on April 27, 2012.

On November 5, 2012, the Department filed a motion to consolidate the two cases, and Definitely Learning did not object. By order dated November 6, 2012, we granted the motion and consolidated both cases as Case No. 12-0813 DH.

On November 28, 2012, we held a hearing. Brett Cavender represented the Department. David G.A. Becker represented Definitely Learning. The matter became ready for our decision on April 25, 2013, the date the last brief was due.

### **Findings of Fact**

1. Definitely Learning is licensed as a child care center to provide care for up to 63 children between the ages of birth to twelve years, 24 hours per day.
2. Definitely Learning's license is limited to no more than nine children under 12 months and 23 children in the infant/toddler unit.
3. Definitely Learning's most current license was for the period March 31, 2011, through February 28, 2013.
4. Definitely Learning provides care for more than four children for compensation at 4245 Indiana Ave., Kansas City, Missouri, 64130. Definitely Learning is a "child-care facility" as defined by § 210.201(2).<sup>1</sup>

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<sup>1</sup> RSMo 2000. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

5. Wesley Poke is the owner and registered agent of the business. He took over the child-care facility when his wife died. Denise Love was an employee who had worked for Mrs. Poke, and she remained on the staff as a caregiver. Love was often the person in charge of the facility when Poke was not there. Love's two daughters, Deonica McGee and Danisha Richardson, also worked as caregivers at Definitely Learning.

6. On January 23, 2012, the Department's Section for Child Care Regulation ("SCCR") sent a letter to Definitely Learning via certified mail, notifying it of SCCR's intent to revoke its child care license.

7. On February 14, 2012, SCCR received Definitely Learning's request for a hearing, appealing the decision to revoke Definitely Learning's child care license.

8. On April 27, 2012, SCCR delivered written notice of immediate suspension to the LLC and a letter notifying Definitely Learning of its intent to revoke the license. Definitely Learning requested a hearing,

9. On May 25, 2012, Definitely Learning's license was suspended after a hearing before the Department's Hearings Unit.

#### Failure to Maintain Physical Plant

10. On July 15, 2011, SCCR conducted an unannounced inspection at Definitely Learning. The door to the storage room was propped open, and the following were accessible to the children: an uncovered electrical outlet, an open clothes dryer; a paper cutter, peeling paint and exposed drywall.

11. On August 17, 2011, SCCR conducted an unannounced compliance monitoring inspection.<sup>2</sup> There were two uncovered electrical outlets in the toddler room, and an aerosol room deodorant on a low shelf in the toddler bathroom was accessible to the children.

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<sup>2</sup> There is no explanation in the record of the difference between a compliance monitoring inspection and a regular unannounced inspection. The compliance monitoring inspection form is more detailed.

12. On September 22, 2011, in response to a complaint, SCCR conducted an unannounced inspection. There were two prescription medications accessible to the children on the desk in the office. A used medicine dispenser with remnants of medication in the dispenser was accessible to the children on the top of a stack of boxes in the hallway.

13. On September 23, 2011, environmental public health specialist (“EPHS”) Cheryl Saavedra conducted an unannounced inspection. There was damage throughout the facility due to water leaks from the roof, water damage to the carpet in the rear hallway, water damage on ceiling tiles in the office, 16 water-damaged ceiling tiles, and snagged carpet throughout the facility with dirty areas where repairs had been made with duct tape.<sup>3</sup>

14. On September 28, 2011, an EPHS conducted a follow-up inspection. The refrigerator was too warm, and the facility was required to discard milk.

15. On September 30, 2011, SCCR staff conducted an unannounced inspection. There were large boxes stacked and leaning in the storage area, and the area was accessible to the children.

16. On October 6, 2011, an EPHS conducted an unannounced inspection. The refrigerator was too warm, and the facility was required to discard milk.

17. On November 2, 2011, an EPHS conducted an unannounced inspection. There was wall damage in the rear hallway.

18. On November 15, 2011, an EPHS conducted an unannounced inspection. The walls were water damaged, infant and toddler toys were not being washed and sanitized as required, there was inadequate lighting in the staff restroom, and the children’s cots were not individually assigned.<sup>4</sup>

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<sup>3</sup> The Department also alleged there was mold, but Definitely Learning successfully rebutted this allegation.

<sup>4</sup> The Department also alleged that items in the basement were not organized to prevent insect and pest infestation, but Definitely Learning successfully rebutted this allegation.

19. On November 16, 2011, City of Kansas City EPH conducted an annual sanitation inspection. There were many bulging ceiling tiles in all hallways, classrooms, and restrooms in the facility. Staff members were changing tiles at the time of the inspection. There was no approved sanitizer in the kitchen or in some of the classrooms, restrooms and diapering areas; kitchen staff were not using the three-step process<sup>5</sup> of sanitizing food contact surfaces, food equipment and utensils; most staff members were not sanitizing diapering surfaces, toys, potty chairs and high chairs after each use; there were spills, debris, and dust throughout the facility; and the refrigerator in the infant classroom was not holding the correct temperature.

20. On November 29, 2011, SCCR conducted an unannounced inspection. A construction area of the building was accessible to the children because the safety gate was not shut and latched; four electrical outlets were not covered in the infant room, both preschool rooms and the hallway; and there was unfinished drywall and wood on the portable wall in the toddler room.

21. On November 30, 2011, a City of Kansas City EPH conducted another inspection. Two bottles of sanitizer did not meet the approved concentrations; debris and dust build-up was observed in the infant/toddler and preschool rooms; there were stained ceiling tiles in the toddler and preschool rooms; and food was not properly stored.

22. On December 12, 2011, EPHS conducted a sanitation re-inspection. There were water damaged ceiling tiles; there was damaged carpet throughout the facility; food was not being stored properly; sanitizer was not at the required strength; and toys were not being cleaned properly in that they were only being sanitized once a week.

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<sup>5</sup> The three-step process involves washing, rinsing, and sanitizing surfaces. Investigators check soapy water, clear water and bleach water. Tr. at 67-68.

23. On January 18, 2012, SCCR conducted an unannounced inspection. The supply room door was open, leaving a running washer and dryer and a large paper cutter accessible to the children.

#### Failure to Maintain Age-Related Classroom Restrictions

24. At the inspection on November 8, 2011, SCCR staff found that a one and a half year-old child was being cared for in the preschool/school-age room. The child was moved to the correct room during the inspection.

25. At the inspection on November 15, 2011, SCCR staff found that a 19-month-old child was in the two-year-old classroom. The two-year-old classroom is part of the preschool space and has not been approved for infant/toddler care.

#### Failure to Maintain Safe and Suitable Play Area

26. At the inspection on June 28, 2011, SCCR staff found exposed plastic ground covering on the playground, creating a tripping hazard. The protective wood chips had been placed to cover the required areas, but were kicked away by the children.

27. At the inspection on August 17, 2011, SCCR staff found exposed plastic ground covering on the playground, creating a tripping hazard.

28. At the inspection on September 19, 2011, SCCR staff found exposed plastic ground covering and bare soil under play equipment. A piece of guttering had torn off the roof and was dangling in the outdoor play area. Definitely Learning staff kept the children away from the over-hanging guttering.

29. At the inspection on September 30, 2011, SCCR staff found that the guttering was still hanging over the outdoor play area and the plastic ground covering was exposed in the outdoor play area, creating a tripping hazard.

30. At the inspection on November 15, 2011, SCCR staff found that a piece of guttering approximately 5 feet long was in the middle of the infant/toddler playground, and plastic ground covering was on the preschool playground, creating a tripping hazard.

31. At the inspection on November 29, 2011, SCCR staff found that there was exposed plastic ground covering in the outdoor play area, creating a tripping hazard.

#### Failure to be of Good Character and Intent

32. At the inspection on November 15, 2011, Deonica McKee, an employee of Definitely Learning, was sleeping in the preschool classroom while children were present. SCCR staff also discovered that records of staff medical examinations allegedly performed by Ashton Goldsworthy, M.D., had identical birthdates, dates of the physical examination, and fax transmittal information.

33. On November 16, 2011, SCCR discovered that Dr. Goldsworthy did not perform medical examinations for staff members Fonda Boals, Kimberly Stevenson, Bridgett Turner, Robert E. Brown, Darnisha Harris, Dominique Anaya, Charles Hoskins, and Antoinette Ford. The medical examination records had been falsified by a day care staff person.

34. On November 17, 2011, SCCR discovered that training hours on file for two caregivers were not valid because they had not attended the training. The training records had been falsified by a day care staff person.

#### Failure to Maintain Staff/Child Ratios

35. By regulation, the Department set the following staff/child ratios that must be maintained at all times.<sup>6</sup>

- Birth Through Two Years – No less than one adult to four children, with no more than eight children in a group.

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<sup>6</sup> 19 CSR 30-62.112(1)(A), (B), and (C).

- Age Two Years – No less than one adult to eight children, with no more than 16 children in a group.
- Three Through Four Years – No less than one adult to ten children.

36. At the inspection on December 21, 2010, SCCR staff found that there were 12 children, ages two and three years and one school-age child, with one caregiver. The facility required one additional caregiver to maintain staff/child ratios. This was corrected during the inspection when three staff members returned from lunch.

37. At the inspection on April 14, 2011, SCCR staff found that nine children, all under two years old, were in one group with two caregivers. The maximum group size for this age was eight children with two caregivers. A caregiver left the infant room to go to the kitchen, leaving five children, all under two years old, with one caregiver. The facility required one additional caregiver to maintain staff/child ratios.

38. At the inspection on May 11, 2011, SCCR staff found that nine children, all under two years old, were in one group with two caregivers. The facility required one additional caregiver and two groups to maintain staff/child ratios. Twenty-one children, all two years old, were with three caregivers. The group size for this age of children was exceeded by five children.

39. At the inspection on June 8, 2011, SCCR staff found that nine children, all under two years old, were with two caregivers. The facility required one additional caregiver and two groups of children to maintain staff/child ratios. This was immediately corrected when a parent picked up a child in the classroom.

40. At the inspection on June 28, 2011, SCCR staff found that one preschool-age child was in the hallway without a caregiver present, and one infant was on a side of a divided infant/toddler room without a caregiver present.



41. On July 1, 2011, SCCR received a complaint and conducted an unannounced inspection. Six children, all under two years of age, were with one caregiver. The facility required one additional caregiver to maintain staff/child ratios.

42. At the inspection on July 15, 2011, SCCR staff found that six children, all under two years of age, were with one caregiver in the outdoor play space. The facility required one additional caregiver to maintain staff/child ratios.

43. On August 22, 2011, SCCR staff conducted training at Definitely Learning's request. Eleven children of mixed ages, including two children under two years of age, were with one caregiver. The two infant/toddler children were required to be cared for in a separate space with one caregiver, and one additional caregiver was required to be in the room with the remaining children of mixed ages.

44. At the inspection on September 13, 2011, SCCR staff found that ten children, all under two years of age, were in one group with three caregivers. The children were required to be in two groups.

45. At the inspection on September 19, 2011, SCCR staff found that eight children, all under two years of age, were with one caregiver; six children, all under two years of age, were with one caregiver; nine children, all two years of age, were with one caregiver; and 23 children, four through eight years of age, were with two caregivers. No additional caregivers were on the premises. The facility required four additional caregivers to maintain staff/child ratios.

46. On September 22, 2011, SCCR received a complaint and conducted an unannounced inspection. Six children, all under two years of age, were with one caregiver, and 17 children, all two years of age, were with two caregivers, so the facility required one additional caregiver to maintain staff/child ratios. Group size for the two-year-old children was exceeded by one child.

47. At the inspection on October 25, 2011, SCCR staff found that five children, all under two years of age, were with one caregiver. The facility required one additional caregiver to maintain staff/child ratios.

48. SCCR received a complaint, and on November 15, 2011,<sup>7</sup> SCCR conducted an unannounced inspection. Fourteen children, ages 19 months to two years old, were with one caregiver when the requirement was for two caregivers. During the inspection, a second caregiver returned to the room.

49. At the inspection on January 13, 2012, SCCR staff found that nine children, all one year old, were with two caregivers. The facility required one additional caregiver to maintain staff/child ratios. Group size for the one-year-old children was exceeded by one child. Caregiver Antoinette Ford left the infant room on two separate occasions, leaving seven children, all under one year old, with one caregiver.

50. At the inspection on January 18, 2012, SCCR staff found that seven children, all one year of age, were with one caregiver. The facility required one additional caregiver to maintain staff/child ratios.

51. Problems with staff/child ratio can occur because children arrive and depart at different times during the day, or sometimes return after a long absence from the facility. Definitely Learning sometimes sent workers home in the morning because there were fewer children than expected and tried unsuccessfully to call them back in the afternoon when more children came in.

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<sup>7</sup> The complaint alleges that this date was on or about November 29, 2011, but the report states that the date of inspection was November 15, 2011.

### Failure to Maintain Safe Premises

52. On April 27, 2012, after a disagreement between Deonica McGee, Jalai Washington, and Edronia Johnson – all employees of Definitely Learning and acquaintances of Washington and Johnson – arrived at the facility. Staff members engaged in a loud argument using profane language in the hallway of the facility. The dispute continued outside the facility where violent threats were made.

53. A parent heard one of the individuals involved in the altercation say, “some kids are going to die today.”<sup>8</sup> A staff member reported seeing a man with a gun sitting in the driver’s side of a vehicle parked next to the facility. However, this was not verified.

54. The police were contacted via a 911 call, and the facility staff locked the outer doors.

### Failure to Maintain Safety Procedures

55. At the inspection on February 29, 2012, SCCR staff found that Definitely Learning did not have written policies and procedures for responding to a disaster emergency.

56. On April 27, 2012, Definitely Learning still did not have written policies and procedures for responding to a disaster emergency. Despite the lack of a written plan, some staff members took steps to protect the children. The outside gate was locked, the building was locked, and the children were kept in their classrooms.

### **Conclusions of Law**

The Department filed a complaint pursuant to § 210.245, which states:

2. If the department of health and senior services proposes to deny, suspend, place on probation or revoke a license, the department of health and senior services shall serve upon the applicant or licensee written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or licensee shall have thirty days to request in writing a

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<sup>8</sup> Petitioner’s Ex. 8.

hearing before the administrative hearing commission and that such request shall be made to the department of health and senior services. If no written request for a hearing is received by the department of health and senior services within thirty days of the delivery or mailing by certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect on the thirty-first day after such delivery or mailing of the notice to the applicant or licensee. If the applicant or licensee makes a written request for a hearing, the department of health and senior services shall file a complaint with the administrative hearing commission within ninety days of receipt of the request for a hearing.

This statute gives us jurisdiction to hear this case. The Department has the burden of proof by a preponderance of the evidence.<sup>9</sup>

Section 210.221, RSMo 2000, states:

1. The department of health shall have the following powers and duties:

(1) After inspection, to grant licenses to persons to operate child-care facilities if satisfied as to the good character and intent of the applicant and that such applicant is qualified and equipped to render care or service conducive to the welfare of children, and to renew the same when expired. No license shall be granted for a term exceeding two years. Each license shall specify the kind of child-care services the licensee is authorized to perform, the number of children that can be received or maintained, and their ages and sex;

(2) To inspect the conditions of the homes and other places in which the applicant operates a child-care facility, inspect their books and records, premises and children being served, examine their officers and agents, deny, suspend, place on probation or revoke the license of such persons as fail to obey the provisions of sections 210.201 to 210.245 or the rules and regulations made by the department of health. The director may also revoke or suspend a license when the licensee fails to renew or surrenders the license;

(3) To promulgate and issue rules and regulations the department deems necessary or proper in order to establish standards of service and care to be rendered by such licensees to children. No rule or regulation promulgated by the division shall in any manner restrict or interfere with any religious instruction, philosophies or

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<sup>9</sup> See *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

ministries provided by the facility and shall not apply to facilities operated by religious organizations which are not required to be licensed; and

(4) To determine what records shall be kept by such persons and the form thereof, and the methods to be used in keeping such records, and to require reports to be made to the department at regular intervals.

The Department argues that Definitely Learning violated regulations as set forth below.

Failure to Maintain Physical Plant

The Department argues that Definitely Learning violated 19 CSR 30-62.082(1):

(A) The premises shall be safe and suitable for the care of children.

(B) The premises shall conform to the fire and safety requirements of the State Fire Marshal or his/her designee and requirements for state or local zoning, building and sanitation.

(C) Children shall have no access to areas not approved for child care.

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(F) Approved safety gates at stairways and doors shall be provided and used as needed.

(G) Protective outlet covers or twist-lock outlets shall be used in areas accessible to the children.

(H) Heaters, floor furnaces, radiators, hot water heaters or other equipment which pose a threat to children shall meet the requirements of 19 CSR 30-62.087 Fire Safety.

Over multiple inspections, the Department found prescription medication in an office that was accessible to children, rooms accessible to children that contained dangerous substances and conditions such as a paper cutter, an open clothes dryer, peeling paint and exposed drywall, failure to use a safety gate, many instances of uncovered electrical outlets, water leaks from the roof, water damage, improper sanitization, inadequate lighting, a refrigerator that was not holding its temperature, and improper food storage.

Definitely Learning argues that many of the incidents were minor, and that the major issues – the leaking roof and the refrigerator – were dealt with as soon as possible. Poke testified that he replaced the roof and other physical problems as soon as his insurance company authorized repairs. But our focus must be on the children. There is no evidence that any child was harmed, but we must agree with the Department that Definitely Learning’s facility was not safe and suitable for children.

Definitely Learning violated 19 CSR 30-62.082(1)(A), (C), (F), and (G). We find no evidence to support a violation of 19 CSR 30-62.082(1)(B) or (H).

#### Failure to Maintain Age-Related Classroom Restrictions

The Department argues that Definitely Learning violated 19 CSR 30-62.082(2)(B)2B(V):

In facilities initially licensed for infant/toddler care after the effective date of these rules or facilities adding new infant/toddler space, no more than twenty-four (24) infants/toddlers and/or two (2)-year olds shall be in a room. A room shall be defined as an area separated from other parts of the building by floor-to-ceiling walls. Stable partitions a minimum of four feet (4’) in height shall be used to separate the infant/toddler or two (2)-year old groups, or both, in a room[.]

The Department showed that, on two occasions, a child was being cared for in the wrong room. A one and a half year-old child was being cared for in the preschool/school-age room, and a 19-month-old child was in the two-year-old classroom. The two-year-old classroom is part of the preschool space and has not been approved for infant/toddler care. We do not see, however, that 19 CSR 30-62.082(2)(B)2B(V) prohibits this situation.

The Department’s complaint also alleges that Definitely Learning violated 19 CSR 30-62.087(6), but presented no evidence about this regulation and did not argue this cause for discipline in its written argument. We consider this claim abandoned.

The Department failed to prove that Definitely Learning violated 19 CSR 30-62.082(2)(B)2B(V) or 19 CSR 30-62.087(6).

Failure to Maintain Safe and Suitable Play Area

The Department argues that Definitely Learning violated 19 CSR. 30-62.082(6)(A):

4. The play area shall be safe for children's activities, well-maintained, free of hazards such as poisonous plants, broken glass, rocks or other debris and shall have good drainage.
5. The fall-zone area under and around outdoor equipment where children might fall and be injured shall be covered with impact-absorbing materials which will effectively cushion the fall of a child, This material may include sand, pea gravel, tanbark, shredded tires, wood chips, rubber matting or other approved resilient material.

Definitely Learning argues that the play area was safe despite the violations noted during several inspections. Poke testified that there were wood chips on top of the black plastic lining, but they were displaced by the children, especially in high traffic areas such as under the slide. He testified that the children were in no danger from the fallen gutter because staff had the children play in other areas.

That these conditions persisted over several inspections, however, leads us to conclude that Definitely Learning violated 19 CSR. 30-62.082(6)(A)(4) and (5).

Failure to be of Good Character and Intent

The Department argues that Definitely Learning violated 19 CSR 30-62.102(1):

- (A) Day care personnel shall be of good character and intent and shall be qualified to provide care conducive to the welfare of children.
- (B) Day care personnel shall cooperate with the department.

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(D) Caregivers shall be capable of carrying out assigned responsibilities and shall be willing and able to accept training and supervision.

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>10</sup>

In its complaint, the Department asserts that the one instance of a caregiver sleeping in her class is a violation of this regulation. The Department does not argue this in written argument, and we find that this one act does not violate the regulation.

We agree with the Department, however, that falsifying the medical and training records indicates a lack of good moral character. Poke argues that he should not be considered to lack good moral character because he did not know about the false records, and at most was guilty of poor supervision. It is not necessary to find that Poke lacks good moral character; the regulation is broader than that. Even if Poke did not falsify the records, there is little doubt that the person who did was one of the day care personnel.<sup>11</sup> This conduct shows a lack of good moral character.

Definitely Learning violated 19 CSR 30-62.102(1)(A), but we do not find that it violated (B) or (D).

#### Failure to Maintain Staff/Child Ratios

The Department argues that Definitely Learning violated 19 CSR 30-62.112:

(1) The following staff/child ratios shall be maintained on the premises at all times:

(A) Birth through Two (2) Years. Groups composed of mixed ages through two (2)-years shall have no less than one (1) adult to four (4) children, with no more than eight (8) children in a group;

(B) Age Two (2) Years. Groups composed solely of two (2)-year olds shall have no less than one (1) adult to eight (8) children, with no more than sixteen (16) children in a group;

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<sup>10</sup> *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

<sup>11</sup> We address the good moral character of the day care personnel in light of the April 27 incident later in this decision.



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(E) Mixed Age Groups Two Years (2) and Up. Groups composed of mixed ages of children two (2) years of age and older shall have no less than one (1) adult to ten (10) children with a maximum of four (4) two (2)-year olds. When there are more than four (4) two (2)-year olds in a mixed group, the staff/child ratio shall be no less than one (1) adult to eight (8) children.

For the most part, Definitely Learning does not deny that there were problems with the staff/child ratios. It argues that many violations were brief absences (a caregiver left the room and quickly returned) and thus many of the violations were corrected during the inspections. Poke also testified that it was difficult to maintain the proper ratio because one child can make the difference between needing another staff member for the day, so the number of caregivers needed throughout the day could fluctuate. But the ratios are established by the Department's regulations, which have the force and effect of law.<sup>12</sup>

Definitely Learning violated 19 CSR 30-62.112(1)(A), (B), and (E).

#### Failure to Maintain Safe Premises

The Department argues that Definitely Learning violated 19 CSR 30-62.082(1):

(A) The premises shall be safe and suitable for the care of children.

and 19 CSR 30-62.102(1):

(A) Day care personnel shall be of good character and intent and shall be qualified to provide care conducive to the welfare of children.

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(E) Caregivers shall have knowledge of the needs of children and shall be sensitive to the capabilities, interests and problems of children in care.

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<sup>12</sup> *Killion v. Bank Midwest, N.A.*, 886 S.W.2d 29, 32 (Mo. App., W.D. 1994).

(M) Any person present at the facility during the hours in which child care is provided shall not present a threat to the health, safety or welfare of the children.

On April 27, 2012, Definitely Learning's employees engaged in a loud argument using profane language in the facility's hallway. The dispute continued just outside the facility, where threats of violence were made. The police officer who responded to the 911 call referred to the scene as "total chaos."<sup>13</sup> Latasha Mitchell, a caregiver who was working on that date, described the incident:

Q: Okay. So focus a little bit on the events that everybody has been talking about: the incident involving an alleged gun and what happened there.

A: Well, in my class I could see everything, as far as the parking lot, the gate, all the way up to the front. I have a good – a view of everything, even the playground, what's going on out there, and the parking lot. I don't know if her name was Jalai. What's her name, the – she's a new girl, so I'm not – I don't really know too much about her.

But I know she kept coming back into my class, saying that she felt threatened like they were going to do something to her and asked if I mind her being back there to help me that day, which was fine because I didn't have that many kids, I knew that after the commotion died down, that some of the teachers were going to get sent home anyway because Denise Love made sure, she sent a lot of us home on a regular basis.

Q: Let me ask you some questions. Did you see any people outside of the facility who were not employees, parents or children?

A: Well, I was in the room when the new girl called her little friends up there. But she said she called them up there to walk her. She wanted to have somebody escort her out of the center because she felt like Ms. Love and her two daughters were going to jump on her.

Q: Did you ever see anybody with a gun?

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<sup>13</sup> Petitioner's Ex. 7 at 2.

A: No. They didn't have any gun. Her family members never made it into the gate at all.

Q: Did you ever hear any threats?

A: I heard the threats. As she went out into the hallway, I heard them asking: why did she follow – I heard Ms. Denise Love asking her: why did she follow her daughter home and why are they bothering her, and they were going to kick her ass. And that's when you started – a whole lot of argument starting going on inside the hallway, and it led outside and to the front of the door.

Q: Okay. Let me ask you something else. When the caregivers realized that there was some threat outside or some allegation about somebody making a threat, what did employees of the facility do?

A: We went on total lockdown. I remember Emma screaming, saying, "Lock all the doors, lock the front door!" She got to running around and panicking more than anything, instead of her acting like calmly, as far as not, you know, startling and scaring the kids. She got to running around, saying, "Lock the doors and call the police!"<sup>14</sup>

Staff members showed a lack of good moral character, were not sensitive to the needs of the children, and created a threat to the safety of the children when they allowed a personal grievance to escalate into a fight that clearly held the potential for violence. The premises were not safe or suitable for children. Definitely Learning violated 19 CSR 30-62.082(1) and 19 CSR 30-62.102(1)(A), (E), and (M).

#### Failure to Maintain Safety Procedures

The Department argues that Definitely Learning violated 19 CSR 30-62.090(1):

(A) The facility shall develop, implement, and maintain policies and procedures for responding to a disaster emergency, including a written plan for:

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<sup>14</sup> Tr. at 174-76.

3. Lock-down procedures in situations that may result in harm to persons inside the facility such as a shooting, hostage incident, intruder, trespassing, or disturbance or to be used at the discretion of the director, designee, or public safety personnel[.]

The Department had cited Definitely Learning for lack of a written policy on February 29, 2012. Poke admitted that there was no written policy then or when it was needed on April 27, 2012. He testified that, at the time of the hearing, there was a written policy posted in each classroom and in the hall of the facility.<sup>15</sup>

Poke testified that there were policies in place even if they were not written, and Mitchell testified that when she was hired, she had been given a handbook that addressed the issue.<sup>16</sup> The description of the emergency plan as implemented involved the remaining staff who were not involved in the altercation locking the outer doors and calling the police. Definitely Learning provided no further specifics as to how the children were protected, particularly since some staff members were outside fighting rather than inside taking care of their assigned children.

Definitely Learning violated 19 CSR 30-62.090(1)(A)3.

#### Definitely Learning's Arguments

Definitely Learning does not dispute many of the allegations made against it. Poke testified that his staff members, particularly Love and her daughters, were sabotaging the business because Love wanted to open her own child care center. There was testimony that at least some of the complaints to SCCR were made by Definitely Learning staff. Poke testified that he did not feel he could fire Love because she had worked as a caregiver at Definitely Learning for a long period, had helped him when he first took over the business, and was responsible for children coming to the child care center.

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<sup>15</sup> Poke testified that he had subsequently prepared a written emergency planning policy. Tr. at 114-15. We gave Definitely Learning the opportunity to file a written emergency plan with us after the hearing, but it did not do so.

<sup>16</sup> Tr. at 176-77.

Poke also points out that many violations were corrected the same day, and many ratio limits were exceeded by only one child. These are factors for the Department to consider in determining the level of discipline to impose, not for us to consider in determining whether cause exists to impose discipline.

In addition, none of these factors minimizes the responsibilities of the licensee, and the licensee is not Poke, but Definitely Learning Child Care Center, LLC, which acts through its agents.<sup>17</sup>

### **Summary**

Definitely Learning is subject to discipline under § 210.221.1(2) for violating 19 CSR 30-62-082(1)(A), (C), (F), and (G); 19 CSR 30-62.082(6)(A)(4) and (5); 19 CSR 30-62.102(1)(A); 19 CSR 30-62.112(1)(A), (B), and (E); 19 CSR 30-62.102(1)(A), (E), and (M); and 19 CSR 30-62.090(1)(A)3.

SO ORDERED on August 7, 2013.

*\s\ Karen A. Winn*

KAREN A. WINN  
Commissioner

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<sup>17</sup> *Fowler v. Park Corp.*, 673 S.W.2d 749 (Mo. banc 1984).